IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7403 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JAGJIVAN M. BAGTHARIA

Appearance:

1. Special Civil Application No. 7403 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

Ms. H.M. Pawar for MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner corporation and Ms. Pawar for Ms. Mandavia

for the respondent workman. In this petition, the petitioner corporation has challenged the award made by the labour Court, Himatnagar in Reference No. 98 of 1998 dated 27.12.2001 wherein the labour court has set aside the order of dismissal and has granted reinstatement in favour of the respondent workman with continuity of service without back wages for the intervening period and has imposed the punishment of stoppage of three annual increments of the respondent workman with recurring effect.

Learned advocate Mr. Raval appearing for the petitioner corporation has submitted that there is serious charge against the respondent workman relating to dishonesty and misappropriation of the funds of the corporation and negligence and in view of that, the labour court ought not to have interfered with the order of dismissal passed by the corporation. It was submitted that the respondent workman is having the past record wherein 23 defaults have been committed by the respondent workman but the labour court has, while passing the award of reinstatement, has not taken it into consideration and in doing so, the labour court has committed serious error. Alternatively, it was submitted by him that looking to the past record of the respondent workman and the seriousness of the charge relating to dishonesty and misappropriation, some more harsh and severe punishment ought to have been imposed by the labour court on the respondent workman while making the award of reinstatement. According to his alternative submission, the punishment of stoppage of three annual increments with recurring effect is not enough looking to his past record and the seriousness of the misconduct alleged against the workman.

As against that, it was submitted by Ms. Pawar for Ms. Mandavia for the respondent workman that the labour court was right in considering the past record as well as the misconduct alleged against the respondent workman and the labour court has, after considering the past record as well as the seriousness of the charge levelled against the respondent workman, denied the back wages for the intervening period from 20.9.1996 till the date of the impugned award on that count alone and over and above that, has imposed punishment of stoppage of three annual increments with cumulative effect and, therefore, the award of the labour court is proper and is supported by the cogent and convincing reasons and, therefore, this petition is required to be dismissed since sufficient care has been taken by the labour court while exercising the powers under section 11A of the

Industrial Disputes Act, 1947. Considering the alternative submission made by the learned advocate Mr. H.C. Raval for the petitioner corporation, it was submitted by her that if this court feels that some more punishment is required to be imposed on the respondent workman, then, this court may consider the mater from that angle and may pass appropriate order imposing more punishment without disturbing the award of reinstatement with continuity of service. Thus, she has left this aspect at this court's discretion.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court concerned. I have also considered the misconduct in question committed by the respondent workman. As per the first charge levelled against the respondent workman, five passengers of one group were found without ticket from whom fare was not collected by the workman and the passengers had paid ten times penalty to the checking staff. As per the second charge levelled against the respondent workman, from three passengers of one group, an amount of Rs.57.75 ps. was recovered and the tickets were not issued. These are the only two charges levelled against the respondent workman. The respondent workman has given explanation to the said charges that he was a new in the route and he was not able to reach the booking and the passengers were sitting in the bus and therefore he was not able to issue tickets immediately after recovering the fare from the passengers; at the time when the bus was checked, he was doing the road booking. As regards the first charge in respect of five passengers who were found without tickets, he has not recovered the fare and in respect of the second charge, he has just recovered the fare and before he could issue the ticket, the bus was checked. The statement which was given by the passenger Ranchhod K. Patel was recorded by the co-passenger who was travelling in the said bus at that time and his address has not been obtained by the reporter from the said passenger and, therefore, in view of these facts, the labour court has rightly appreciated these facts that there was some doubt in respect of the statement of the passenger Ranchhodbhai K. Patel relating to three passengers. The labour court was of the view that at the most, this could be considered as negligence on the part of the respondent workman and not the dishonesty or misappropriation as alleged by the petitioner corporation and therefore, considering all these facts and circumstances of the case while keeping in view the seriousness of the charges as well as the past, the labour court has made the award of reinstatement with

continuity of service without back wages for the intervening period and also imposed punishment of stoppage of one annual increment with cumulative effect. I am, therefore, of the view that the award of reinstatement made by the labour court after considering all the facts and circumstances of the case would require no interference in this petition. However, looking to the misconduct in question as well as the past record of the respondent workman, when both the advocates have left at the discretion of this court to consider whether some more punishment is required to be imposed or not, I am of the view that in the peculiar facts and circumstances of the case, the denial of back wages for the back wages for the intervening period and the punishment of stoppage of three annual increments with cumulative effect cannot be considered to be enough and it would be proper to order for stoppage of five annual increments of the respondent workman instead of three as has been ordered by the labour court. I am of the opinion that the award made by the labour court is required to be modified to that extent without disturbing the award of reinstatement with continuity of service, in the interest of justice.

Therefore, in the result, this petition is partly allowed. The award made by the labour court Himatnagar in Reference No. 98 of 1998, dated 27.12.2001 is hereby modified in so far as it relates to imposition of punishment of stoppage of three annual increments with cumulative effect and instead of three annual increments, five annual increments are ordered to be stopped with cumulative effect. It is however clarified that this court has not disturbed the award of reinstatement with continuity of service. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Learned advocate Ms. Pawar appearing for Ms. Mandavia for the respondent has prayed for directing the petitioner to implement the award within some reasonable period so that the respondent in whose favour award of reinstatement has been made by the labour court. In response to such prayer made by Ms. Pawar for the respondent workman, learned advocate Mr. Raval for the petitioner corporation has submitted that the petitioner corporation will implement the award made by the labour court as modified by this court within some reasonable period. Considering the submissions made by the learned advocates for the parties, and also considering the fact that the respondent is out of job since 1996 and the labour court has made the award of reinstatement with continuity of service without back wages for the intervening period, it is directed to the petitioner

corporation to reinstate the respondent workman in service within four weeks from the date of receipt of copy of this order. D.S.P.

Dt. 1.4.2003. (H.K. Rathod,J.)
Vyas